

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: LYLE SCHROEDER; Sioux County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2011-AQ-15
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TO: Lyle Schroeder
4339 500th Street
Granville IA 51022

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Lyle Schroeder for the purpose of resolving violations related to the illegal open burning of solid waste, including waste tires. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Brandon Minor, Field Office 3
Iowa Department of Natural Resources
1900 N. Grand
Spencer IA 51301-2200
Phone: 712-262-4177

Relating to legal requirements:

Jon Tack, Attorney for the DNR
Iowa Department of Natural Resources
502 E 9th St.
Des Moines, IA 50319
Phone: 515-281-8889

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Lyle Schroeder**

III. STATEMENT OF FACTS

1. Lyle Schroeder owns a property located in Section 32, East Orange Township, Sioux County, Iowa.
2. On September 2, 2010, Environmental Specialist Brandon Miller observed a large volume of black smoke coming from a burn pile located in Section 32, East Orange Township, Sioux County, Iowa. The color of the smoke indicated that tires or other similar substance might be burning. Mr. Miller stopped at the property. At that time Lyle Schroeder and Alan Schroeder were tending to a burn pile. The fire included trees and at least 3 tires, including a tractor tire. At least 20 additional tires were in loader buckets waiting to be dumped on the fire. Lyle Schroeder acknowledged an intent to burn these additional tires. Mr. Miller informed Mr. Schroeder that the burning of tires is illegal. Mr. Schroeder indicated that he was unaware that the burning of tires is prohibited. Mr. Schroeder was informed that the tires could not be buried or burned and was instructed to immediately cease the burning of tires.
3. On September 16, 2010 the DNR issued a Notice of Violation to Lyle Schroeder informing him of the prohibition on the burning of tires and notifying him that the matter was being referred to DNR legal for further enforcement action.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.
2. 567 IAC 23.2 states that no person shall allow, cause, or permit open burning of combustible materials except as provided in subrules 567 IAC 23.2(2) (variances) and 567 IAC 23.2(3) (exemptions). The burning documented in this matter does not fall under 567 IAC 23.2(2) exemptions and the burning of waste tires is specifically prohibited. The above facts demonstrate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and Lyle Schroeder agrees to the following:

1. By May 15, 2011, Lyle Schroeder shall submit receipts documenting the proper disposal of all waste tires observed on his property on September 2, 2010.
2. By May 15, 2011, Lyle Schroeder shall pay a penalty in the amount of \$500.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Lyle Schroeder**

VI. PENALTY

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000 per day of violation for each of the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with an administrative penalty of \$500. The administrative penalty is determined as follows:

Economic Benefit – Lyle Schroeder has achieved an economic benefit from the violations documented herein. The illegal open burning of waste tires results in the avoidance of time, labor and disposal costs. These costs have been mitigated by the proper disposal of the remaining waste tires observed on the property and therefore a penalty of only \$100 is assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute. The illegal open burning of waste tires releases toxins that endanger human health and the environment. Therefore a penalty of \$400 is assessed for this factor.

Culpability – Because the DNR has not documented a prior history of open burning violations by Lyle Schroeder, no penalty is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

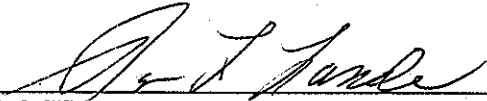
This administrative consent order is entered into knowingly and with the consent of Lyle Schroeder. For that reason Lyle Schroeder waives his rights to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146. Total compliance with all provisions of Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Kenneth Knight

specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.



ROGER L. LANDE, DIRECTOR
Iowa Department of Natural Resources

Dated this 13th day of
May, 2011.



LYLE SCHROEDER

Dated this 11 day of
May, 2011.

Field Office #4; VII C.1

I gave the rest of 20 in all to a neighbor, he need some more to hold down the plastic cover for his silage pile.

Thank you Lyle Schroeder

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